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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PATRICK W. MCLAUGHLIN,

Plaintiff,

VS.

UNUM LIFE INSURANCE  
COMPANY OF AMERICA,

Defendant.

CASE NO:

COMPLAINT FOR:

BREACH OF THE EMPLOYEE  
RETIREMENT INCOME  
SECURITY ACT OF 1974;  
INJUNCTIVE, EQUITABLE AND  
DECLARATORY RELIEF;  
PREJUDGMENT AND  
POSTJUDGMENT INTEREST;  
AND ATTORNEYS' FEES' AND  
COSTS

Plaintiff, Patrick W. McLaughlin (hereinafter "Plaintiff" or "Mr. McLaughlin"),  
herein sets forth the allegations of his Complaint against Unum Life Insurance  
Company of America ("Unum" or "Defendant").

**PRELIMINARY ALLEGATIONS**

1. "Jurisdiction" - This action is brought under 29 U.S.C. sections 1132(a),  
(e), (f) and (g) of the Employee Retirement Income Security Act of 1974 (hereinafter  
"ERISA") as it involves a claim by Mr. McLaughlin for employee benefits under an  
employee benefit plan regulated and governed under ERISA. Jurisdiction is

1 predicated under these code sections as well as 28 U.S.C. § 1331 as this action  
2 involves a federal question.

3       2.       This action is brought for the purpose of obtaining Mr. McLaughlin  
4 benefits under the terms of an long term disability (“LTD”) Plan. It is also brought to  
5 enforce Mr. McLaughlin’s rights as to an LTD employee benefit plan. Mr.  
6 McLaughlin also seeks appropriate equitable relief, prejudgement and postjudgment  
7 interest, and attorneys’ fees and costs.

8       3.       Prior to his disability Mr. McLaughlin was employed by a company  
9 called HR Betty. Due to that employment Mr. McLaughlin was a participant in the  
10 HR Betty Disability Plan. The HR Betty Disability Plan was funded by a policy of  
11 disability insurance issued by Unum.

12       4.       Since 2012 Mr. McLaughlin has been a resident of Manhattan Beach,  
13 California, in the County of Los Angeles.

14       5.       Defendant Unum is a Maine corporation with its principal place of  
15 business in Portland, Maine. Unum had the authority to make all decisions for the  
16 HR Betty Disability Plan as to whether a participant was entitled to benefits, the  
17 amount of the benefits, and any offsets from benefits that were appropriate. Further,  
18 the HR Betty Disability Plan was fully funded through the purchase of a Unum policy.  
19 As such, Unum had the sole responsibility to pay benefits under the HR Betty  
20 Disability Plan.

21       6.       Unum can be found in this judicial district. Thus, venue is proper in this  
22 judicial district pursuant to 29 U.S.C. § 1132(e)(2) (special venue rules applicable to  
23 ERISA actions). In addition, Mr. McLaughlin resides in this judicial district, and  
24 Unum’s adverse benefit decision occurred in this judicial district. As such, his claim  
25 arose in this judicial district.

26                   **STATEMENT OF RELEVANT FACTS**

27       7.       Prior to his disability Mr. McLaughlin had two jobs. Along with his  
28 employment with HR Betty, Mr. McLaughlin also worked for MassMutual Financial

1 Group (“MassMutual”). Due to his employment with MassMutual, Mr. McLaughlin  
2 was a participant in the MassMutual Disability Plan. The MassMutual Disability Plan  
3 was funded by a policy of disability insurance issued by Liberty Life Assurance  
4 Company of Boston (“Liberty”).

5 8. The MassMutual Disability Plan and the HR Betty Disability Plan had  
6 similar terms regarding payment of benefits. Specifically, in the event that Mr.  
7 McLaughlin became disabled, both the MassMutual Disability Plan and the HR Betty  
8 Disability Plan would pay as benefits a percentage of the income Mr. McLaughlin  
9 earned at that particular job. For example, in the event of his disability the HR Betty  
10 Disability Plan would pay Mr. McLaughlin 60% of his earnings from HR Betty.

11 9. The MassMutual Disability Plan and the HR Betty Disability Plan also  
12 had similar terms regarding offsets from benefits. An “offset” is a reduction in  
13 benefits payable from the respective Plan based on benefits received from other  
14 designated sources. Both the MassMutual Disability Plan and the HR Betty Disability  
15 Plan allow the respective Plans to offset the amount of Social Security Disability  
16 Insurance (“SSDI”) benefits that Mr. McLaughlin might receive.

17 10. Mr. McLaughlin was born with a hiatal hernia, which went undiagnosed  
18 for many years. In 1996 he began suffering from a number of symptoms, including  
19 difficulty swallowing, shortness of breath, nausea, and vomiting. His hernia was  
20 discovered, a 1996 surgery to correct the problem failed, and Mr. McLaughlin  
21 suffered an additional injury to his esophagus. In 1997 he had a second surgery, in  
22 which diaphragmatic mesh was used to repair the hernia and rebuild his diaphragm.

23 11. This surgery was initially believed to be successful, however it failed in  
24 2005, when it was determined that the mesh used to contain the hernia had torn. Mr.  
25 McLaughlin had an additional surgery to repair the tear and, once again, for a time it  
26 appeared this surgery was successful.

27 12. However on or about December of 2013 Mr. McLaughlin began having  
28 trouble breathing. His physicians determined that the mesh used to repair the hernia

1 had peeled off, and was wrapped around and strangling Mr. McLaughlin's esophagus.  
2 Further, Mr. McLaughlin's stomach had migrated up toward his right shoulder. He  
3 underwent yet another surgery which involved removal of most of his stomach and  
4 creation of a new stomach and esophagus.

5 13. Unfortunately, this surgery also failed, and Mr. McLaughlin's physicians  
6 had to resort to connecting the remaining piece of his original stomach to a permanent  
7 feeding tube. He continues to have acid entering his lungs and suffers from extreme  
8 pain, and his physicians eventually admitted that his condition was so unusual that  
9 they did not know how to repair it.

10 14. Due to Mr. McLaughlin's medical problems and complications from his  
11 numerous surgeries, in December of 2013 UNUM agreed that Mr. McLaughlin was  
12 disabled with an assigned disability date of August 6, 2013. Unum began paying Mr.  
13 McLaughlin benefits due him under the HR Betty Disability Plan.

14 15. Similarly, Liberty reviewed Mr. McLaughlin's claim, agreed he was  
15 disabled under the terms of the MassMutual Disability Plan, and began providing him  
16 with disability benefits.

17 16. GENEX Services, LLC is a company that Unum uses to assist its  
18 insureds in obtaining SSDI benefits. Unum does this because, when the insured  
19 receives SSDI benefits, Unum can then offset its monthly benefit payment by the  
20 amount of the SSDI payment.

21 17. On or about June 30, 2015 Unum referred Mr. McLaughlin to GENEX,  
22 informing him that GENEX could assist him in obtaining SSDI benefits. On July 1,  
23 2015 GENEX informed Unum that it had accepted Mr. McLaughlin's case and would  
24 assist him in obtaining SSDI benefits.

25 18. In January of 2016 the Social Security Administration ("SSA") approved  
26 Mr. McLaughlin's claim for SSDI benefits, as of January 2014 (SSDI benefits are not  
27 payable during the first six months of disability). The SSA began payment of monthly  
28 benefits, and also made a lump sum payment to Mr. McLaughlin for benefits payable

1 from January 2014 through December 2015. The SSA also approved an increased  
2 amount of SSDI for Mr. McLaughlin, based on his minor child.

3 19. On January 18 and February 22, 2016 Unum notified Mr. McLaughlin  
4 that it was offsetting (i.e. reducing) Mr. McLaughlin's monthly disability benefit by  
5 the amount of the monthly SSDI award. In addition, Unum informed Mr. McLaughlin  
6 that, because the SSDI award was backdated to January of 2014, his claim was  
7 overpaid by the amount of the lump sum payments he received from SSA. Unum  
8 demanded that Mr. McLaughlin pay it the amount of the lump sum, or else it would  
9 reduce his monthly benefit still further in order to recoup this sum.

10 20. Mr. McLaughlin received a similar communication from Liberty, in  
11 which it reduced his benefits due under the MassMutual Disability Plan by the amount  
12 of his SSDI benefit, and sought recovery of the entire amount of the lump sum Mr.  
13 McLaughlin received from the SSA.

14 21. Because Mr. McLaughlin was receiving income from two disability  
15 plans, this put him in an untenable position. He was already without any work  
16 income. Now, in spite of the fact that he had only received a single lump sum from  
17 the SSA, both insurers were demanding that the entire amount of the lump sum be  
18 paid to it.

19 22. Moreover, each of the insurers insisted on offsetting the entire amount of  
20 Mr. McLaughlin's SSDI award from the benefit it paid. As such, with two insurers  
21 both reducing Mr. McLaughlin's disability benefits by the entire SSDI award, Mr.  
22 McLaughlin was in significantly worse financial shape than if SSDI had never been  
23 granted.

24 23. Mr. McLaughlin complained to both Liberty and Unum about the offsets,  
25 noting that he only had one income from SSDI and both were taking 100% of it. In  
26 response, Liberty did the fair and sensible thing. It recognized that it was only paying  
27 Mr. McLaughlin 39% of his disability income. As such, it agreed to reduce the  
28 amount of the offset to 39% of his SSDI benefit.

1        24. Unum, however, insisted on taking 100% of Mr. McLaughlin's SSDI  
 2 benefits as offsets, in spite of the fact that it was only providing him with 61% of his  
 3 disability benefits. As such, due to Unum's intransigence, Mr. McLaughlin was still  
 4 made financially worse off with the grant of SSDI than if these benefits had never  
 5 been granted.

6        25. Mr. McLaughlin appealed from Unum's decision to take 100% of the  
 7 SSDI as offsets, in spite of the fact that it was only providing him 61% of his benefits.  
 8 Unum denied the appeal, informing Mr. McLaughlin that it would continue taking the  
 9 full offset.

10                    **FIRST CAUSE OF ACTION AGAINST DEFENDANT**  
 11                    **UNUM FOR PLAN BENEFITS**

12        26. Mr. McLaughlin refers to and incorporates by reference paragraphs 1  
 13 through 25 as though fully set forth herein.

14        27. Unum's decision to offset the full amount of the SSDI benefit was wrong,  
 15 for three separate reasons.

16        28. First, Unum's reading of its policy violates state insurance law principles  
 17 relating to situations like the one here, where more than one policy of insurance  
 18 covers the same loss. To address this situation policies frequently contain  
 19 "coordination of benefit" provisions in order to apportion the loss among the insurers.  
 20 Unum's provision allowing it to take offsets from other benefits received by Mr.  
 21 McLaughlin constitutes a coordination of benefit provision, as it seeks to coordinate  
 22 paying for the loss occasioned by Mr. McLaughlin's disability among the various  
 23 types of disability insurance to which he may become entitled.

24        29. However, some types of coordination provisions are what are known as  
 25 "escape clauses." An escape clause is one by which the insurer attempts to shift the  
 26 entire amount of its insurance burden onto other insurance that may be available. The  
 27 coordination of benefits provision in the HR Betty Disability Plan constitutes such an  
 28 escape clause.

1       30.   Escape clauses are disfavored and, under unpreempted California  
2 insurance law, as well as the insurance law of other states, they are interpreted to  
3 require equitable contributions from all insurers on a pro rata basis, regardless of how  
4 the actual provision is worded.

5       31.   In addition, Unum's reading of its policy is inequitable. As noted above,  
6 when it came time for Unum to determine the amount of benefits owed to Mr.  
7 McLaughlin, it looked only to the pre-disability income earned from a single  
8 employer, HR Betty. However, the SSA calculated his SSDI benefit from his total  
9 income from all employers.

10       32.   In other words, only a share of Mr. McLaughlin's SSDI benefit is based  
11 on his employment with HR Betty. Yet, in spite of the fact that Unum calculates its  
12 benefit from the income attributed to that one employer, Unum is offsetting 100% of a  
13 benefit that is calculated based on Mr. McLaughlin's total employment.

14       33.   In addition, Unum's reading of its policy provision violates the law that  
15 prevents alienation of Social Security benefits, set out in 42 U.S.C. § 107(a).

16       34.   Mr. McLaughlin has exhausted all administrative remedies required  
17 under ERISA, and he has either performed all duties and obligations on his part to be  
18 performed under the HR Betty Disability Plan, or those duties have been waived or  
19 excused as a matter of law.

20       35.   Mr. McLaughlin seeks an Order of this Court that Unum reduce the  
21 amount of the offset it is taking for SSDI benefits to 61% of those benefits, retroactive  
22 to the date at which Unum began taking its offset.

23       36.   Further, as a further direct and proximate result of Unum's adverse  
24 benefit decision regarding the amount of Mr. McLaughlin's benefits, in pursuing this  
25 action he has been required to incur attorneys' costs and fees. Pursuant to 29 U.S.C. §  
26 1132(g)(1), Mr. McLaughlin is entitled to have such fees and costs paid by Unum.

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**SECOND CAUSE OF ACTION AGAINST DEFENDANT**  
**UNUM FOR EQUITABLE RELIEF**

37. Mr. McLaughlin refers to and incorporates by reference paragraphs 1 through 36 as though fully set forth herein.

38. As a direct and proximate result of Unum's decision to take 100% of the SSDI benefits as offsets in spite of the fact that it is only paying 61% of his disability benefits, Unum is acting inequitably and contrary to its obligations as an ERISA fiduciary, to Mr. McLaughlin's detriment. As such, Mr. McLaughlin is entitled to and hereby requests that this Court grant him the following relief pursuant to 29 U.S.C. § 1132(a)(3):

- i. Reformation of the HR Betty Disability Plan to mandate that Unum may only offset that portion of Mr. McLaughlin's SSDI benefits that is commensurate with the 61% of Mr. McLaughlin's disability benefits that it is paying;
- ii. Restitution and an order of Surcharge against the HR Betty Disability Plan, that it repay to Mr. McLaughlin all offsets it has taken from Mr. McLaughlin's SSDI benefits in excess of the 61% to which it is equitably entitled;
- iii. Issuance of a mandatory injunction requiring Unum to cease taking excess offsets from Mr. McLaughlin's SSDI benefits and to return any excess offsets it has previously taken from Mr. McLaughlin; and
- iv. Such other and further relief as the Court deems necessary and proper to protect Mr. McLaughlin's interests as a disabled employee and/or participant under the HR Betty Disability Plan.

39. Further, as a further direct and proximate result of Unum's improper and inequitable conduct regarding Mr. McLaughlin's LTD benefits, in pursuing this action

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1 he has been required to incur attorneys' costs and fees. Pursuant to 29 U.S.C. §  
2 1132(g)(1), Mr. McLaughlin is entitled to have such fees and costs paid by Unum.

3 **THIRD CAUSE OF ACTION AGAINST DEFENDANT**  
4 **UNUM FOR DECLARATORY RELIEF**

5 40. Mr. McLaughlin refers to and incorporates by reference paragraphs 1  
6 through 39 as though fully set forth herein.

7 41. A controversy now exists between Defendant on the one hand and  
8 Plaintiff on the other as to what extent Defendant is entitled to offset Mr.  
9 McLaughlin's SSDI benefits from the disability benefit it owes him. Plaintiff  
10 therefore seeks a declaration by this Court that Unum's ability to take offsets from his  
11 SSDI benefits should be limited to 61% of those benefits.

12 42. Further, as a further direct and proximate result of Unum's improper and  
13 inequitable conduct regarding Mr. McLaughlin's LTD benefits, in pursuing this action  
14 he has been required to incur attorneys' costs and fees. Pursuant to 29 U.S.C. §  
15 1132(g)(1), Mr. McLaughlin is entitled to have such fees and costs paid by Unum.

16 **REQUEST FOR RELIEF**

17 WHEREFORE, Plaintiff Patrick McLaughlin prays for relief against Defendant  
18 Unum Life Insurance Company of America as follows:

- 19 1. For an order that it limit its offsets from Mr. McLaughlin's SSDI benefits  
20 to 61% of those benefits;
- 21 2. For an order that it repay to Mr. McLaughlin any offsets from his SSDI  
22 benefits that it has previously taken that are in excess of 61% of those  
23 benefits;
- 24 3. For equitable relief reforming the Plan to limit Unum's right to offset  
25 other benefits received to 61% of those benefits, as well as an order of  
26 restitution and surcharge that Unum return any offsets that it has taken in  
27 excess of this amount;

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4. Pursuant to 29 U.S.C. § 1132(g), for all costs and attorney fees incurred in pursuing this action;
5. For prejudgement and postjudgment interest; and
6. For such other and further relief as this Court deems just and proper.

DATED: February 12, 2017

Law Offices of Russell G. Petti

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